IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

D.B. CIVIL WRIT PETITION NO.4448/2000

1.Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2.The Divisional Railway Manager, Western Railway, D.R.M. Office, Jaipur.

.....Petitioners

Versus

1.The Central Administrative Tribunal, Rajasthan Bench at Jaipur.
2.Narayan Dutta Purohit S/o Shri V.D. Purohit, aged about 31 years, resident of Jaipur, presently posted as RAJBHASHA SAHAYAK GRADE-II, At Division Railway Office, Jaipur.

.....Respondents

Date of Order:- July 9th , 2007.

PRESENT
HON'BLE MR.JUSTICE R.M. LODHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Suresh Pareek for petitioner-UOI.
Mr. P.V. Calla for respondent No.2.

****

Oral Order:- (Per R.M. Lodha, J.)

The office of Divisional Railway Manager, Jaipur on 2/6/1999 issued an office order placing the present respondent No.2-Narayan Dutta Purohit in the provisional panel of Hindi Assistant Gr.II in the pay scale of Rs.4500-7000.

2. The Head Office, Western Railway inquired into the legality of the provisional panel dated 2/6/1999 relating to Hindi Assistant Gr.II on the complaint made by Western Railway Employees Union and it was found that in the preparation of provisional panel for Hindi Assistant Gr.II made by the office of Divisional Railway Manager, Jaipur did not follow the circular of the Railway Board dated 12/1/1988 and, consequently, vide communication dated 3/2/2000 directed the Divisional Railway Manager, Jaipur to cancel

the provisional panel of Hindi Assistant Gr.II prepared vide office order dated 2/6/1999.

3. The respondent No.2 herein challenged the said order/communication dated 3/2/2000 issued by the Head Office, Western Railway Mumbai by filing Original Application before the Central Administrative Tribunal, Jaipur Bench, Jaipur.

4. The Original Application was contested by the present petitioners by filing reply to the Original Application.

5. The Central Administrative Tribunal, after hearing the parties allowed the Original Application filed by the present respondent No.2 and quashed the

order/communication dated 3/2/2000. While quashing the order/communication dated 3/2/2000, the Central Administrative Tribunal assigned two reasons namely; (one) merely because the constitution of Selection Committee was not in accord with instructions/guidelines issued by the Headquarters, does not make the whole selection process illegal and on such technical ground, the selection panel prepared could not have been cancelled particularly when there was no allegation of bias against the Selection Committee and the person who was included in the Selection Committee was having a special knowledge of Hindi and English and (two) that no notice to show cause was given to the Selectee before cancellation of selection which must have been given.

6. It is this order of the Central Administrative Tribunal which is impugned in the present writ petition.

7. The Indian Railway Establishment Manual is a compilation of Rules, Circulars and instructions issued by the Railway Board from time to time. It has been revised from time to time. The Manual contains the rules governing promotion of Group-C Staff. That the post of Hindi Assistant Gr.II is covered by the rules governing Group-C Staff is not in dispute. It is also not in dispute that it is a selection post.

8. Paragraph 215 provides that selection post shall be filled in by positive act of selection made with the help of Selection

Boards from amongst the staff eligible for selection. It further provides that the selection for promotion to a selection post shall be made primarily on the basis of merit. It also provides that promotion to a selection post shall be made by the competent authority in accord with the recommendations of the Selection Board in the manner set out in paragraph 216.

9. Paragraph 217 deals with Selection Boards and according to this provision, the Selection Board shall be constituted for the purpose of making recommendations to the competent authority in respect of the Railway servant considered by it as suitable for filling a selection post. It also provides that Selection Board may be constituted under the orders of General Manager or Head of the

Department or other competent authority but not lower than a Divisional Railway Manager.

10. The constitution of the Selection Board is provided in paragraph 218 which reads thus:-

> "218.**Constitution of Selection Boards :**
>
> (a) Selection Boards shall consist of not less than three officers, one of whom should be a Personnel Officer and one of the Members should be from a Department other than that for which selection is held.
>
> (b) When a Selection Board consist of only three Officers, none of the members be directly subordinate to any other.
>
> (c) For selection post in the scale of Rs.1600-2660 and above, the Selection Boards will consist of Officers of Junior administrative rank, for all other selection posts the Selection Board will consist of Officers not lower in rank than senior scale. In either case the Selection Board may include a Personnel Officer in the next lower rank, shall,

nevertheless, be a equal number of the Selection Board.

(d) Every effort should be made to include a SC/ST Officers on the Selection Board whether of the same Department, if available or the other Department /Railway /Production Units or a non-Railway Department.

(e) If for any reason the competent authority is unable to comply with the provisions of this paragraph, it should make a report of the facts to the General Manager."

11. Paragraph 219 provides for procedure to be adopted by Selection Board which again highlights that selection should be made primarily on the basis of over all merit. For the guidance of Selection Board, the factors to be taken into account and their relative weight have been laid down in the said para.

12. It is pertinent to notice here and to that extent there is no dispute that on 12/1/1988 the Railway Board issued a circular

which was addressed to all General Managers with regard to the constitution of Selection Board for Non-Gazetted Hindi post on Railways. The said circular mandates that the Selection Board for the post of Hindi Assistant Gr.II (Rs.1400-2300) shall consist of Senior Rajbhasha Adhikari of the concerned Railway division and two other Senior Scale Officers including one from Personnel Department. It makes a provision that representation of Personnel Department, may, however, be in the next lower grade as per normal rules. It also provides and that is quite important that in the case of written test, setting up of question papers and evaluation of answer books will be done by Senior Rajbhasha Adhikari of the Railway/office concerned.

13. The first question that falls for our determination is whether the Selection Board constituted by the Divisional Railway Manager, Jaipur for the post of Hindi Assistant Gr.II was in breach of the rules and the directives issued by the Railway Board or it only suffered from some technical flow as held by the Central Administrative Tribunal.

14. As we have noticed above, the post of Hindi Assistant Gr.II (Rs.1400-2300) is a selection post. This selection post as per the rules governing promotion of Group-C Staff has to be filled through the selection process made with the help of Selection Board. The selection is based on over all merit evaluated amongst others by written test or viva-voce or both. The Selection

Board for the post as per Circular dated 12/1/1988 must consist of Senior Rajbhasha Adhikari of the concerned railway/division and two other Senior Scale Officers including one from Personnel Department. In case of written test, the question papers have to be set up by Senior Rajbhasha Adhikari and evaluation of the answer books also has to be done by him. A written test for selection of Hindi Assistant Gr.II was conducted is not in dispute. That the Selection Board did not have Senior Rajbhasha Adhikari as one of its members is also not in dispute. How could in the circumstances, question paper for written test and evaluation of answer books be made in accord with the Circular dated 12/1/1988 when the Selection Board consisted of Junior Rajbhasha Adhikari. To adjudge over all merit of a candidate for the post of Hindi

Assistant Gr.II, Railway Board decided that in case of written test, setting up of question paper and evaluation of answer books will be done by Senior Rajbhasha Adhikari. This is not an empty formality. Nor a technical flaw. A Junior Rajbhasha Adhikari cannot substitute the requirement of a Senior Rajbhasha Adhikari who alone is competent to set up the question paper and evaluation of answer books in case of written test and selection for the post of Hindi Assistant Gr.II.

15. The counsel for respondent No.2 sought to contend that in the office of Divisional Railway Manager, Jaipur there was no post of Senior Rajbhasha Adhikari. Accordingly, the Divisional Railway Manager made a report to the General Manager who

approved the constitution of the Selection Board made by the Divisional Railway Manager for selection to the post of Hindi Assistant Gr.II. It is true that paragraph 218(e) provides that if for any reason the competent authority is unable to comply with the provisions of paragraph 218(e) of constitution of Selection Board, it would make a report to the General Manager and that was not done and the General Manager approved the Selection Board. However, this cannot give legitimacy to an otherwise illegitimate Selection Board since mandate of the Railway Board is categorical, clear and unambiguous that Selection Board for the post of Hindi Assistant Gr.II will comprise of Senior Rajbhasha Adhikari and in case of written test, setting up of question paper and evaluation of answer books will be done by

Senior Rajbhasha Adhikari. The importance of Senior Rajbhasha Adhikari in the Selection Board for the post of Hindi Assistant Gr.II is thus far more than the other two members of the Selection Board as the right of setting question paper and evaluation of answer books in the case of written test has only been given to Senior Rajbhasha Adhikari.

16. Any selection dehors the relevant rules for such selection cannot be countenanced and given any legitimacy. The Central Administrative Tribunal committed a serious error in upholding selection made with the help of illegal Selection Board on an erroneous premise that mere constitution of Selection Committee not in accord with the instructions/guidelines issued by the Headquarters, does not make whole selection

process illegal and such selection panel could not have been cancelled on technical ground. As a matter of fact, the Railway Board acted in accord with law in directing the Divisional Railway Manager to undo the illegal provisional panel prepared by it which was not in accord with the circular of the Railway Board dated 12/1/1988.

17. The counsel for the respondent No.2 invited our attention to the order of the Supreme Court in the case of R.C. Srivastava Vs. Union of India & Anr. (SLP(C) No.9866 of 1993) dated November 3, 1995. Having considered the said order thoughtfully, we find that said order has no application to the present fact situation. The order of the Supreme Court in the case of R.C. Srivastava did not relate to a controversy of Selection

Board having been constituted not in accord with the relevant rules. The matter related to candidate who was declared unsuccessful in interview by the Selection Panel. The present case is quite distinct and the controversy raised herein is entirely different.

18. The second question that requires our consideration is whether the Central Administrative Tribunal was justified in observing that before cancellation of select list, notice to show cause must have been given to the respondent No.2. We do not think so. Empanelment of a candidate in the provisional panel prepared by the Selection Board, does not create any legal right. When no legal right was created in favour of the respondent No.2, there was no requirement in

law of giving notice to show cause to the respondent No.2 by the Railway Board before cancellation of the provisional panel.

19. Mr. P.V. Calla stoutly relied on the judgment of the Supreme Court in the case of S. Govindaraju Vs. K.S.R.T.C. and another : AIR 1986 SC 1680 in support of the Tribunal's view that show cause notice to the respondent was a must before cancellation. That was a case where candidate was selected by the Selection Committee constituted for the Karnataka Road Transport Corporation (Cadre and Recruitment) Regulations, 1982) and his name was included in the select list prepared by the Selection Committee for the purpose of appointment as Conductor as and when vacancies would arise. His name was also

included in the Badli list of workers. Though he was not given a regular appointment, he was appointed to work as Conductor in temporary vacancy. He continued to work for a period of more than 240 days. While he was working as Conductor, his services were terminated. In the backdrop of the fact that the candidate was allowed to be continued in service for a period of more than one year and while he was in continuous service, order of termination was issued without giving him any opportunity of hearing, it was held that the order of termination was in violation of principles of natural justice. That is not a case here. The respondent No.2 was not given any appointment or promotion pursuant to the provisional panel prepared by the Selection Committee. As a matter of fact, before the

provisional panel could fructify it was cancelled by the Railway Board vide order/communication dated 3/2/2000. The fact situation did not require any show cause notice being given to the respondent No.2 and the view of the Tribunal in this regard is misplaced and misconceived.

20. In what we have said above, the order of the Central Administrative Tribunal has to be set-aside and we order accordingly.

21. Resultantly, the Original Application filed by the respondent No.2 before the Central Administrative Tribunal stands dismissed. The parties shall bear their own costs.

MOHAMMAD RAFIQ, J. **R.M. LODHA, J.**

anil

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

D.B. CIVIL WRIT PETITION NO.4448/2000.

Union of India and anr.
Vs.
The Central Administrative Tribunal and anr.

Date of Order:- July 9th , 2007.

HON'BLE MR.JUSTICE R.M. LODHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

****

Whether this judgment / order is to be reported in Law Journal/s : Yes/No